

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DEMETRIUS BAILEY, RICHARD  
SUTTONS, GERALD WIGGINS,  
THOMAS JOHNSON,

Plaintiffs,

v.

LIBRARY ASSISTANT JURNAK, et  
al.,

Defendants.

No. 4:18-CV-1437

(Judge Brann)

(Magistrate Judge Mehalchick)

**ORDER**

**FEBRUARY 28, 2019**

1. Plaintiff<sup>1</sup> instituted the above-captioned action against Defendants in the Court of Common Pleas of Luzerne County, Pennsylvania.<sup>2</sup>
2. Defendants removed the action to this Court and subsequently moved to dismiss Plaintiff's complaint for failure to state a claim.<sup>3</sup>

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<sup>1</sup> Although the caption includes multiple plaintiffs—Demetrius Bailey, Richard Sutton, Gerald Wiggins, and Thomas Johnson—pleadings in this case have been authored by Mr. Bailey, and as United States Magistrate Judge Karoline Mehalchick points out, Mr. Sutton, Mr. Wiggins, and Mr. Johnson do not appear to be connected to most of the allegations in the complaint. *See* Report and Recommendation (ECF No. 14) at 3 n.1. As Magistrate Judge Mehalchick refers to plaintiffs in the singular, this Court adopts that nomenclature here without substantively altering the caption.

<sup>2</sup> Complaint (ECF No. 1-2).

<sup>3</sup> Notice of Removal (ECF No. 1); Motion to Dismiss (ECF No. 2).

3. United States Magistrate Judge Karoline Mehalchick issued a Report and Recommendation recommending that this Court grant Defendants' motion to dismiss without prejudice as to Plaintiff's deliberate indifference, access to the courts, and equal protection claims, and deny Defendants' motion to dismiss Plaintiff's retaliation claim.<sup>4</sup>
4. Prior to the issuance of Magistrate Judge Mehalchick's Report and Recommendation, Plaintiff filed a "Motion for Relief / Motion for Court Order / Injunction Hearing"<sup>5</sup> and a "Supplemental Amended Complaint."<sup>6</sup>
5. After Magistrate Judge Mehalchick issued her Report and Recommendation, Plaintiff filed a motion for an extension of time to amend his complaint.<sup>7</sup> Plaintiff next filed objections to Magistrate Judge Mehalchick's Report and Recommendation.<sup>8</sup> Prior to this Court's disposition on Plaintiff's motion for an extension of time, Plaintiff filed an amended complaint.<sup>9</sup>

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<sup>4</sup> Report and Recommendation (ECF No. 14).

<sup>5</sup> Plaintiff's Motion for Injunction Hearing (ECF No. 9).

<sup>6</sup> Plaintiff's Supplement Amended Complaint (ECF No. 11).

<sup>7</sup> Plaintiff's Motion for Extension of Time (ECF No. 15).

<sup>8</sup> Plaintiff's Objection to Report and Recommendation (ECF No. 16); Plaintiff's Brief in Support (ECF No. 17). Defendants have filed a brief in Opposition. Defendants' Brief in Opposition (ECF No. 18).

<sup>9</sup> Plaintiff's Amended Complaint (ECF No. 19).

6. After Plaintiff filed an amended complaint, Defendants filed a motion to stay the responsive pleading deadline until after receiving this Court's disposition on Magistrate Judge Mehalchick's Report and Recommendation.<sup>10</sup>
7. This Court has reviewed Magistrate Judge Mehalchick's Report and Recommendation *de novo*.<sup>11</sup>
8. Finding that Plaintiff's objections are meritless and have been adequately and accurately addressed by Magistrate Judge Mehalchick, and given that Plaintiff has already filed an amended complaint, this Court **ADOPTS** the Report and Recommendation, ECF No. 14 as follows. Accordingly, **IT IS HEREBY ORDERED THAT:**
  - a. Defendants' Motion to Dismiss, ECF No. 2, is **DENIED** as to Plaintiff's retaliation claim, and **GRANTED** as to Plaintiff's deliberate indifference, access to courts, and equal protection claims.
  - b. Because Plaintiff has already filed an amended complaint, ECF No. 19, Magistrate Judge Mehalchick's grant of leave to amend is **DENIED AS MOOT**. Plaintiff's amended complaint is deemed filed.

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<sup>10</sup> Defendants' Motion to Stay (ECF No. 25).

<sup>11</sup> 28 U.S.C. § 636(b)(1).

- c. Plaintiff's motion for an extension of time to file an amended complaint, ECF No. 15, is **DENIED AS MOOT**.
- d. To the extent Plaintiff intended his Supplemental Amended Complaint, ECF No. 11, to be construed as a motion for leave to amend, it is **DENIED AS MOOT**. To the extent Plaintiff intended his Supplemental Amended Complaint, ECF No. 11, to serve as an Amended Complaint, it is **DISMISSED** in accordance with Magistrate Judge Mehalchick's Report and Recommendation.
- e. Defendants' motion to stay the responsive pleading deadline is **GRANTED**. Defendants **SHALL** file a responsive pleading to Plaintiff's amended complaint before Wednesday, March 27, 2019 at 5:00 p.m.
- f. Plaintiff's "Motion for Relief / Motion for Court Order / Injunction Hearing," ECF No. 9, is not affected by this Order and should proceed before Magistrate Judge Mehalchick accordingly.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann

United States District Judge